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Federal Communications Commission

DA 96-1778

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-9
Table of Allotments,)	RM-8736
FM Broadcast Stations.)	
(Ukiah, California))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 20, 1996

Released: November 1, 1996

By the Chief, Allocations Branch:

1. The Commission considers herein the Notice of *Proposed Rule Making*, 11 FCC Rcd 1786 (1996), issued in response to a petition filed by LifeTalk Broadcasting Association ("petitioner"),¹ proposing the allotment of FM Channel 246A to Ukiah, California, as that community's fourth local FM transmission service. Petitioner filed comments in response to the *Notice*.² No other comments were received.

2. As stated in the *Notice*, petitioner's proposal is premised on a desire to provide additional noncommercial educational service to Ukiah.³ However, petitioner advised that the proximity of Station KVIE-TV, Channel 6, Sacramento, California, precluded the availability of any noncommercial educational channels in the reserved band from which a Class A channel could operate with maximum facilities to serve the Ukiah, California, area. Accordingly, petitioner requested the reservation of Channel 246A at Ukiah to enable it to achieve its service goal.

¹Although the petitioner's rule making request advised that it is the licensee of noncommercial educational Station KSOH(FM), Yakima, Washington, as reflected in the *Notice*, a search of the Commission's records cannot confirm the accuracy of its statement.

²As stated in the *Notice*, petitioner's request, although signed and an address provided, did not include an affidavit verifying statements contained in the petition, as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the deficiency in responsive comments, and has provided a declaration through counsel.

³According to the Commission's records, Ukiah is presently served by noncommercial educational Station KPRA(FM), Channel 208B1. Additionally, an application has been filed by Northern California Public Broadcasting to provide additional noncommercial educational service to Ukiah on Channel 202A (File No. BPED-940316ME).

3. The *Notice* stated that Commission policy generally refrains from reserving channels in the commercial band for noncommercial use in allotment proceedings except where the use of channels in the reserved band (Channels 201-220) are precluded due to VHF television Channel 6 interference, or the existence of Mexican or Canadian allocations, citing *Butte, Montana*, 9 FCC Rcd 2180 (1994); *Buhl, Montana*, 9 FCC Rcd 2606 (1994). In this instance, we found that while most of the noncommercial channels are affected by television Channel 6 in Sacramento and Eureka, California, all are precluded from use at Ukiah by other domestic noncommercial educational FM stations. Therefore, as potential television channel 6 interference did not merit the reservation of a commercial channel for noncommercial use at Ukiah in this instance, Channel 246A was proposed for allotment based upon the petitioner's expressed interest in providing an additional FM service to that community. Petitioner was advised that in the event Channel 246A should be allotted to Ukiah, it could submit an application therefor specifying noncommercial educational programming.

4. In response to the *Notice*, petitioner renewed its interest in the proposed allotment of Channel 246A to Ukiah, but reiterated its preference that the channel be reserved for noncommercial use. In support, petitioner states its belief that the reasoning surrounding the two criteria traditionally enumerated by the Commission as a basis to reserve a commercial channel for noncommercial use, *i.e.*, the close proximity of VHF television Channel 6, or the existence of Mexican or Canadian allotments, is "too simplistic." Petitioner claims that other decisions in which commercial channels have been reserved for noncommercial use have been premised on other factors, and therefore the instant proposal should not be dependent solely upon the proximity of Channel 6 or foreign allotments.⁴ Rather, petitioner urges that other factors should give rise to the reservation of a commercial channel for educational use such as preclusion of the entire noncommercial band by existing stations or pending applications. Additionally, petitioner asserts that the demand for additional reserved channels should be considered *vis-a-vis* the demand for commercial channels in the requested community. With regard to the latter, petitioner urges that as no other comments were filed expressing a desire to operate Channel 246A at Ukiah for commercial purposes, and since at least three other commercial channels are claimed to be available for allotment to the community in the event a demand were to arise, Channel 246A should be allotted to Ukiah and reserved for noncommercial use, as requested.

⁴Petitioner cites to *Butte, Montana*, 9 FCC Rcd 2180 (1984); *Bozeman, Montana*, 4 FCC Rcd 4835 (1989); and *Rochester, Minnesota*, 7 FCC Rcd 6505 (1992). However, in each of the cited cases, potential or actual interference by television channel 6 to affected stations operating in the educational band was the prevailing factor. In all three instances, Channel 6 precluded the availability of *any* other noncommercial allotment on which the existing licensees could operate to avoid interference to TV 6, or improve their level of service as a consequence thereof. Petitioner cites also to *Siloam Springs, Arkansas*, 2 FCC Rcd 7485 ((1987), affirmed, 4 FCC Rcd 4920 (1989). However, in that proceeding, the Commission found that the presence of television Channel 6 at Tulsa, Oklahoma, justified reserving a commercial channel for educational use by the existing licensee, in order to preserve the only outlet for noncommercial educational programming in the community. Although the petitioner preferred to be modified without the reservation, based upon the enhanced value of a commercial channel, the Commission found that the petitioner failed to provide a basis for allotting the commercial channel without the reservation. None of the cited circumstances, apply directly to the instant request.

5. Initially, we disagree with petitioner's assertion that the absence of other interests in the use of Channel 246A for commercial use at Ukiah, coupled with the alleged availability of other commercial channels for allotment to the community, should merit its reservation as requested. Rather, on the basis of the information provided, we affirm our belief that the petitioner's proposal does not meet the criteria established to reserve a channel in the commercial band. *See Collegeville, Minnesota*, 10 FCC Rcd 3328 (1995). *See also Comobabi, Arizona*, 47 FR 32717, July 29, 1982; *Burlington and Newport, Vermont*, 45 RR 2d 786 (1979); *Presque Isle, Maine*, 36 RR 2d 840 (1976); *Waco, Texas*, 10 FCC 2d 865 (1967); and *Bulls Gap, Tennessee*, 10 FCC Rcd 10444 n.1 (1995). As stated in the *Notice*, while a majority of the channels in the reserved band are impacted by television channel 6 in Sacramento and Eureka, California, all are precluded from use at Ukiah by other domestic noncommercial educational FM stations, and therefore potential television channel 6 interference in this instance does not merit the reservation of a commercial channel for noncommercial use. Moreover, denial of petitioner's proposal will not deprive Ukiah of noncommercial educational programming since, as indicated in n. 3, *supra*, the community currently receives such local service from Station KPRA(FM), Channel 208B1.

6. Nevertheless, based upon the petitioner's continuing expression of interest in Channel 246A, we will allot the channel to Ukiah and specify an application filing window period. Petitioner, or other interested parties, may submit an application for the allotment during the designated filing window specifying their intended programming format.

7. Channel 246A can be allotted to Ukiah, California, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, utilizing city reference coordinates, North Latitude 39-09-00 and West Longitude 123-12-30.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 16, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Ukiah, California, as follows:

<u>City</u>	<u>Channel No.</u>
Ukiah, California	233B, 246A, 277B, 290B

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. The window period for filing applications for Channel 246A at Ukiah, California, will open on December 16, 1996, and close on January 16, 1997.

11. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 246A at Ukiah, California, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau